

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN MCGINLEY,

Plaintiff,

- against -

17-cv-2182 (JGK)

MEMORANDUM OPINION
AND ORDER

ANDREW SAUL, Commissioner of the
Social Security Administration,

Defendant.

JOHN G. KOELTL, District Judge:

The Court has received an application for attorney's fees, filed by plaintiff's counsel, Lewis B. Insler, pursuant to 42 U.S.C. § 406(b), after the matter was favorably concluded, following an order from this Court remanding the case to the Social Security Administration. ECF Nos. 25-26. The application is reasonable: The amount of fees requested, the contingent-fee agreement, and the de facto hourly rates are all appropriate. Further, the government has not raised any objections to the amount, contingent-fee agreement, or hourly rate. ECF No. 27.

As the government notes in their letter, the plaintiff's fee application was filed beyond the time limit set forth in Sinkler v. Berryhill, 932 F.3d 83, 89 (2d Cir. 2019) (holding that Fed. R. Civ. P. 54(d)(2)(B)'s 14-day filing period applies to section 406(b) attorney's fees applications). However, the Sinkler court noted that district courts may "enlarge" the filing period "where circumstances warrant," because Rule 54 "expressly states that the specified period

applies '[u]nless a statute or a court order provides otherwise.'" Id. at 89 (quoting Fed. R. Civ. P. 54(d)(2)(B)).

The plaintiff's attorney has requested that this Court find that circumstances here warrant extending the filing deadline and treating the petition as timely, because he is "Of Counsel" to, and without a physical office in, the Hermann Law Group, where the July 6, 2019 Notice of Award Letters were mailed, and thus did not learn of the Notice until March 25, 2020, when Mr. Hermann consulted him about a fee-related question. ECF No. 25, p. 3. Although the period of delay is longer than that in Sinkler, the petitioner has represented that he was not informed of the decision until March 25, 2020, whereafter he promptly filed the petition. The Court accepts this justification and finds extending the filing period warranted under the circumstances.

Therefore, the plaintiff's application for attorney's fees in the amount of \$12,500 pursuant to section 406(b) is **granted**. The Clerk is directed to close Docket No. 25 and to close this case.

SO ORDERED.

Dated: New York, New York
October 19, 2020


John G. Koeltl
United States District Judge

